

Exhibit E

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Dey, Inc., et al.,
Civil Action No. 05-11084-PBS

Exhibit to Plaintiff's Memorandum In Support of United States' Motion
In Limine Regarding Testimony of Raymond C. Winter and
Sequencing of Deposition Testimony

00234

1 NO. GV002327
THE STATE OF TEXAS) IN THE DISTRICT COURT
2 EX REL.)
VEN-A-CARE OF THE)
3 FLORIDA KEYS, INC.,)
PLAINTIFF(S),)
4)
VS.) TRAVIS COUNTY, TEXAS
5)
DEY, INC.; ROXANE)
6 LABORATORIES, INC., WARRICK)
PHARMACEUTICALS CORPORATION,)
7 SCHERING-PLOUGH CORPORATION,)
AND SCHERING CORPORATION,)
8 DEFENDANT(S).) 53RD JUDICIAL DISTRICT

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ORAL AND VIDEOTAPED DEPOSITION OF

11

CHARLES A. RICE

12

NOVEMBER 7TH, 2002

13

VOLUME 2

14

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16 ORAL AND VIDEOTAPED DEPOSITION OF CHARLES A. RICE,
17 PRODUCED AS A WITNESS AT THE INSTANCE OF THE
18 PLAINTIFF(S), AND DULY SWORN, WAS TAKEN IN THE
19 ABOVE-STYLED AND NUMBERED CAUSE ON NOVEMBER 7TH, 2002,
20 FROM 9:12 A.M. TO 5:34 P.M., BEFORE CYNTHIA VOHLKEN,
21 CSR IN AND FOR THE STATE OF TEXAS, REPORTED BY MACHINE
22 SHORTHAND, AT THE OFFICES OF COUDERT BROTHERS, 600
23 BEACH STREET, SAN FRANCISCO, CALIFORNIA PURSUANT TO
24 THE TEXAS RULES OF CIVIL PROCEDURE.

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00235

1 A P P E A R A N C E S

2 FOR THE PLAINTIFF(S) :

3 MR. PATRICK J. O'CONNELL
4 MR. RAYMOND C. WINTER
5 MS. CYNTHIA O'KEEFFE
6 OFFICE OF THE ATTORNEY GENERAL
7 STATE OF TEXAS
8 POST OFFICE BOX 12548
9 AUSTIN, TEXAS 78711-2548

7 FOR THE RELATOR:

8 MR. JAMES JOSEPH BREEN
9 THE BREEN LAW FIRM, P.A.
10 P. O. BOX 297470
11 PEMBROKE PINES, FLORIDA 33029-7470

11 -AND-

12 MR. FRANK M. PITRE
13 COTCHETT, PITRE, SIMON & MCCARTHY
14 840 MALCOLM ROAD, SUITE 200
BURLINGAME, CALIFORNIA 94010

15 FOR THE DEFENDANT(S) DEY, INC.:

16 MR. STEPHEN M. HUDSPETH
17 COUDERT BROTHERS
18 1114 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036-7703

19 -AND-

20 MR. STEVEN A. FLECKMAN
21 FLECKMAN & MCGLYNN, P.L.L.C.
22 515 CONGRESS, SUITE 1800
AUSTIN, TEXAS 78701-3503

22 FOR THE DEFENDANT ROXANE LABORATORIES, INC.:

23 MR. R. ERIC HAGENSWOLD
24 SCOTT, DOUGLASS & MCCONNICO, L.L.P.
25 ONE AMERICAN CENTER, FIFTEENTH FLOOR
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AUSTIN, TEXAS 78701

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1 FOR THE DEFENDANT WARRICK PHARMACEUTICALS CORPORATION
2 AND SCHERING-PLOUGH CORPORATION AND SCHERING
CORPORATION:

3 MS. KARIN B. TORGERSON
4 LOCKE LIDDELL & SAPP, LLP
5 2200 ROSS AVENUE, SUITE 2200
DALLAS, TEXAS 75201-6776

6 ALSO PRESENT:

7 MR. ELISEO SISNEROS,
8 CALIFORNIA OFFICE OF THE
ATTORNEY GENERAL
9 MR. ZACHARY TAYLOR BENTLEY, II
MS. ANNE ARNOLD
10 MR. BRIAN BOBBITT, VIDEOGRAPHER

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00338

1 Q. YOU SAID YOU DIDN'T KNOW WHO THE DIRECTOR OF
2 SALES WAS IN 1995. WAS IT MR. PALLAS?

3 A. MR. PALLAS WAS A DIRECTOR OF SALES. AGAIN, I
4 DON'T RECALL THE SPECIFIC YEARS. IT COULD HAVE BEEN.

5 Q. AND DID YOU ALSO TELL US THAT MS. ANDERLE WAS
6 A DIRECTOR OF SALES AT ONE TIME?

7 A. THAT'S CORRECT.

8 Q. OKAY. WOULD IT HAVE BEEN IN THE ORDINARY
9 COURSE OF BUSINESS AND IN CONJUNCTION WITH THEIR JOB
10 DUTIES FOR EITHER MR. PALLAS OR MS. ANDERLE TO HAVE
11 OVERSEEN THE PREPARATION OF A DOCUMENT OF THAT NATURE
12 AND INSTRUCTIONS TO SALES STAFF TO USE A DOCUMENT OF
13 THAT NATURE IN THEIR CONVERSATIONS WITH CUSTOMERS AND
14 POTENTIAL CUSTOMERS?

15 A. IT COULD HAVE BEEN, BUT I DON'T THINK EITHER
16 ONE OF THEM WOULD HAVE.

17 Q. MAY I SEE THAT AGAIN, PLEASE?

18 A. YES, YOU MAY.

19 Q. JUST SO THE RECORD IS CLEAR, THE DOCUMENT OF
20 THAT NATURE WE ARE REFERRING TO IS DEPOSITION EXHIBIT
21 328.

22 AND IN PARTICULAR, MR. RICE, I WOULD
23 LIKE YOU TO DIRECT YOUR ATTENTION TO THE LAST PAGE OF
24 THIS EXHIBIT, WHICH IS BATES STAND DL-TX-0029713. AND
25 DO YOU SEE THE CHART THERE THAT IS ENTITLED

00339

1 "REIMBURSEMENT COMPARISON WORKSHEET"?

2 A. YES, SIR, I DO.

3 Q. OKAY. SO WHEN I HAVE ASKED YOU PREVIOUS
4 QUESTIONS ABOUT A COMPARISON OF THE NATURE THAT I HAD
5 PREVIOUSLY DESCRIBED REGARDING WARRICK'S DRUGS VERSUS
6 DEY'S DRUGS, THAT'S WHAT I WAS ASKING YOU ABOUT, THAT
7 KIND OF A COMPARISON. IS THAT WHAT YOU UNDERSTOOD I
8 WAS ASKING YOU ABOUT BEFORE?

9 A. I BELIEVE IT IS WHAT I UNDERSTOOD, YES.

10 Q. OKAY. I JUST WANT TO MAKE SURE THAT WE WERE
11 CLEAR ON THAT. SO YOU JUST TESTIFIED THAT YOU DON'T
12 BELIEVE EITHER MR. PALLAS OR MS. ANDERLE WOULD HAVE
13 MADE THAT AUTHORIZATION TO USE A COMPARISON WORKSHEET
14 OF THAT NATURE; IS THAT CORRECT?

15 A. FROM WHAT I RECALL OF MR. PALLAS AND
16 MS. ANDERLE I DON'T THINK THEY WOULD HAVE, NO.

17 Q. DO YOU THINK THAT MR. TIPTON WOULD HAVE
18 AUTHORIZED DEY'S SALES STAFF TO USE A COMPARISON
19 DOCUMENT SUCH AS THE LAST PAGE OF EXHIBIT 328 THAT YOU
20 HAVE IN FRONT OF YOU?

21 A. IT'S POSSIBLE, BUT AGAIN, IT WOULD ONLY BE
22 SPECULATION.

23 Q. SO IT'S POSSIBLE THAT MR. TIPTON GAVE THE
24 DIRECTIVE TO DEY'S SALES STAFF TO USE THAT DOCUMENT,
25 IS THAT YOUR TESTIMONY?

00340

1 A. IT COULD HAVE HAPPENED THAT WAY. I DON'T --

2 AGAIN, I DON'T RECALL. I DON'T KNOW. I CERTAINLY

3 DIDN'T AUTHORIZE THE USE OF THIS.

4 Q. DO YOU RECALL A CONVERSATION WHERE THAT WAS

5 EVER PRESENTED TO YOU AS A POSSIBLE OR DRAFT DOCUMENT

6 IN WHICH YOU REVIEWED IT, YOU SAID, "NO. LET'S NOT

7 USE THIS"?

8 A. NO. I DON'T RECALL EVER SEEING THIS UNTIL

9 AFTER WE PRODUCED ALL OF THE DOCUMENTS TO YOU GUYS.

10 Q. OKAY. DID MR. MOZAK WHEN YOU HAD

11 CONVERSATIONS WITH HIM REGARDING THE USE OF THAT

12 DOCUMENT, DID HE TELL YOU THAT HE HAD SPECIFICALLY

13 REVIEWED THAT DOCUMENT AND DISAPPROVED THE USE OF IT

14 IN DEY'S SALES PRESENTATIONS?

15 A. NO. WHAT I RECALL MR. MOZAK SAYING IS HE HAD

16 NOT SEEN THIS AGAIN UNTIL RECENTLY.

17 Q. DID MR. MOZAK LEAD YOU TO BELIEVE THAT HE HAD

18 SEEN ANYTHING SIMILAR TO THAT DOCUMENT AND MADE THE

19 DECISION THAT THEY WERE -- THAT IT WAS INAPPROPRIATE

20 AND WAS NOT TO BE USED?

21 A. NO. MY DISCUSSION WITH MR. MOZAK WAS

22 PERTAINING TO THE -- THE -- THE CONCEPT OF THIS TYPE

23 OF AN APPROACH AND HIS RESPONSE TO ME WAS HE HAD NEVER

24 APPROVED THE USE OF THIS TYPE OF APPROACH ANYWHERE

25 WITHIN DEY.